

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

SAMSUNG ELECTRONICS CO., LTD.,
Petitioner

v.

NETLIST, INC.,
Patent Owner

Case PGR2026-00001
U.S. Patent No. 12,373,366

**PATENT OWNER PRELIMINARY RESPONSE
UNDER 37 C.F.R. § 42.207(a)**

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PATENT OWNER'S UPDATED EXHIBIT LIST

Exhibit No.	Description
2001	Joint Development and License Agreement, November 12, 2015
2002	Stock Purchase Warrant, November 18, 2015
2003	Senior Secured Convertible Promissory Note, November 18, 2015
2004	Security Agreement by and between Netlist, Inc. and SVIC No. 28 New Technology Business Investment L.L.P., November 18, 2015
2005	Samsung Venture Investment Corporation website, available at https://www.samsungventure.co.kr/english/jsp/company/company.jsp (last accessed October 12, 2025)
2006	Recorded Assignment and IP Security Agreement, Reel No. 037150, Frame No. 0897, November 20, 2015
2007	Release of Assignment, Reel No. 065629, Frame No. 0330, November 20, 2023
2008	Redacted First Amended Complaint for Breach of Contract and Declaratory Relief, <i>Netlist Inc. v. Samsung Electronics Co., Ltd.</i> , Case No. 8:20-cv-00993-JAK (C.D. Cal.), August 31, 2020
2009	Judgment, <i>Netlist Inc. v. Samsung Electronics Co., Ltd.</i> , Case No. 8:20-cv-00993-JAK (C.D. Cal.), April 7, 2025
2010-2013	<i>Intentionally Left Blank</i>
2014	Verdict Form, <i>Netlist, Inc. v. Samsung Electronics Co. et al.</i> , Case No. 2:21-cv-00463-JRG (E.D. Tex.), April 21, 2023
2015	Complaint, <i>In the Matter of Certain Dynamic Random Access Memory (DRAM) Devices, Products Containing the Same, and Components Thereof</i> , Investigation No. 337-TA-3854 (I.T.C.), September 29, 2025
2016	<i>Intentionally Left Blank</i>

Exhibit No.	Description
2017	Verdict Form, <i>Netlist, Inc. v. Samsung Electronics Co. et al.</i> , Case No. 2:22-cv-00293-JRG (E.D. Tex.), November 22, 2024
2018	List of Patent Trial and Appeal Board proceedings filed by Samsung Electronics Co., Ltd. against Netlist, Inc.’s Patents, Docket Navigator, generated November 10, 2025
2019	Notice of Proposed Rulemaking, 90 Fed. Reg. 48,335 (Oct. 17, 2025)
2020	Excerpts from PTAB 2025 Intelligence Report, Patexia, Inc.
2021	Ramkumar, A., “Trump Takes Aim at Chip Makers With New Plan to Throttle Imports,” <i>The Wall Street Journal</i> , September 26, 2025, accessible at https://www.wsj.com/economy/trade/trump-chip-tariffs-exemptions-90fa2ab3 (last accessed September 26, 2025)
2022	<i>Intentionally Left Blank</i>
2023	“Netlist and SK hynix Enter into Strategic Agreements for Patents, Technology and Product Supply,” Netlist Press Release, April 5, 2021
2024	“Precedential designation of <i>Corning Optical Communications RF, LLC v. PPC Broadband Inc.</i> , IPR2024-00440, Paper 68 (PTAB Aug. 18, 2015) (except for § II.E.1),” Memorandum from Under Secretary of Commerce for Intellectual Property and Acting Director of the United States Patent Trademark Office John A. Squires, October 28, 2025
2025	Public Redated Version of Proposed First Amended Complaint for Declaratory Judgment of Non-Infringement, <i>Samsung Electronics Co., Ltd. et al. v. Netlist, Inc.</i> , Case No. 1:25-cv-00626-JLH (D. Del.), July 29, 2025
2026	<i>Intentionally Left Blank</i>

Exhibit No.	Description
2027	Plaintiff's Corporate Disclosure Statement, <i>Samsung Electronics Co., Ltd. et al. v. Netlist, Inc.</i> , Case No. 1:25-cv-00626-JLH (D. Del.), May 20, 2025
2028	List of Patent Trial and Appeal Board proceedings listing Samsung Electronics America, Inc. as Petitioner, Docket Navigator, generated December 3, 2025
2029	Morris, A., "IPBC Global 2025: Acting USPTO Director says IPR use needs to change," <i>IAM</i> , June 10, 2025, accessible at https://www.iam-media.com/article/ipbc-global-2025-acting-uspto-director-says-ipr-use-needs-change (last accessed June 16, 2025)
2030-2039	<i>Intentionally Left Blank</i>
2040	Judgment under Federal Circuit Rule 36, <i>Samsung Elecs. Co., Ltd. v. Netlist, Inc.</i> , Appeal No. 23-2133 (Fed. Cir.), March 5, 2025
2041	Judgment under Federal Circuit Rule 36, <i>Samsung Elecs. Co., Ltd. v. Netlist, Inc.</i> , Appeal No. 25-1378 (Fed. Cir.), December 9, 2025
2042	<i>Intentionally Left Blank</i>
2043	Complaint, <i>Netlist, Inc. v. Samsung Elecs. Co., Ltd. et al.</i> , Case No. 2:25-cv-00748-JRG (E.D. Tex.), July 28, 2025
2044-2046	<i>Intentionally Left Blank</i>
2047	Company Profile, Avnet, Inc., accessible at https://s23.q4cdn.com/291570380/files/doc_downloads/factsheet/2020/Avnet-Fact-Sheet.pdf (last accessed December 22, 2025)
2048	"Samsung Authorized Distributor Avnet Americas," Avnet, Inc., accessible at https://www.avnet.com/americas/manufacturers/m/samsung/ (last accessed December 22, 2025)
2049-2052	<i>Intentionally Left Blank</i>

Exhibit No.	Description
2053	Order Initiating <i>Sua Sponte</i> Director Review and Staying Proceeding, IPR2025-00145 (P.T.A.B. Dec. 22, 2025)
2054	Notice of Institution of Investigation, Inv. No. 337-TA-1472 (I.T.C. Dec. 29, 2025)
2055	Comparison of Claim 1 of U.S. Patent No. 12,373,366 with Claim 1 of U.S. Patent No. 11,232,054, Claim 1 of U.S. Patent No. 11,016,918, Claim 1 of U.S. Patent No. 8,874,831, and Claim 1 of U.S. Patent No. 8,301,833
2056	Petition for <i>Inter Partes</i> Review of U.S. Patent No. 11,232,054, IPR2022-00999 (P.T.A.B. May 17, 2022)
2057	Petition for <i>Inter Partes</i> Review of U.S. Patent No. 7,619,912, IPR2022-00615 (P.T.A.B. Feb. 17, 2022)
2058	Decision Granting Petitioner's Request on Rehearing of Final Written Decision, IPR2022-00236 (P.T.A.B. Aug. 16, 2023)
2059	Initial Determination Setting the Target Date, Inv. No. 337-TA-1472 (I.T.C. Jan. 14, 2026)
2060	Proposed Procedural Schedule, Inv. No. 337-TA-1472 (I.T.C. Jan. 14, 2026)
2061	Defendants Samsung Semiconductor, Inc. and Samsung Electronics America, Inc.'s Motion to Dismiss for Improper Venue, <i>Netlist, Inc. v. Samsung Electronics Co., Ltd. et al.</i> , Case No. 2:25-cv-00748-JRG (E.D. Tex.), November 19, 2025
2062	Amended Adopted Procedural Schedule, Inv. No. 337-TA-1472 (I.T.C. Feb. 6, 2026)
2063	Trial Transcript, Volume 3, <i>Netlist, Inc. v. Samsung Electronics Co., Ltd. et al.</i> , Case No. 2:21-cv-00463-JRG (E.D. Tex.), April 18, 2023

Exhibit No.	Description
2064	Complaint for Declaratory Judgment of Non-Infringement, <i>Samsung Electronics Co., Ltd. et al. v. Netlist, Inc.</i> , Case No. 1:25-cv-00626-JLH (D. Del.), June 9, 2025
2065	U.S. Patent No. 11,503,749 to Sim et al., issued November 15, 2022
2066	U.S. Patent No. 11,688,928 to Lee, issued June 27, 2023
2067	U.S. Patent No. 10,904,418 to Agrawal et al., issued January 26, 2021
2068	U.S. Patent No. 10,623,675 to Lee, issued April 14, 2020
2069	U.S. Patent No. 12,288,001 to Choi et al., issued April 29, 2025
2070	U.S. Patent No. 12,488,249 to Lou et al., issued December 2, 2025

I. INTRODUCTION

The Director should deny institution of *inter partes* review of claims 1-38 of U.S. Patent No. 12,373,366 (“the ’366 patent”) for the following reasons:

First, despite being clear beneficiaries of Petitioner’s challenge to the ’366 patent, and having a preexisting, established relationships with Petitioner, neither Samsung Electronics America, Inc. (“SEA”) nor Avnet, Inc. (“Avnet”) is listed as an RPI to this IPR. SEA and Avnet are heavily involved in the dispute with Netlist involving the ’366 patent. SEA is a respondent in the co-pending ITC investigation. SEA and Avnet are co-defendants in the co-pending district court case in the Eastern District of Texas (EDTX). And SEA and Avnet are *co-plaintiffs* in Samsung’s declaratory judgment action in Delaware (“Delaware DJ action”). That Samsung *itself* chose to list SEA and Avnet as co-plaintiffs in the Delaware DJ action forecloses any argument they are not RPIs here. Indeed, as co-plaintiffs, SEA and Avnet represented to the Delaware court they have DJ standing with respect to the ’366 patent. The Board’s precedential decision in *Corning Optical* mandates that the Petition cannot be considered because it fails to name all RPIs, and thus the Director should deny institution.

Second, Samsung alleges no terms need to be construed. But, in its Petition, Samsung presents narrow, implicit constructions of certain claim elements to allege (incorrectly) that the claim elements lack written description support. *See*

Pet., 28-46. Samsung’s narrow, implicit constructions are inconsistent with its position here that no terms need to be construed, and thus the Director should deny institution under *Revvo* and *Tesla*.

Third, the ’366 patent is not PGR-eligible because the claims satisfy the written description requirement. Samsung’s contentions that the claims lack support because the specification allegedly does not include the specific claimed combinations of elements are legally and factually flawed. For instance, Samsung presents legal theories that rely on cases in the chemical and biological arts, not in electronics. Samsung also argues that the written-description requirement cannot be met by “picking and choosing claim elements from different embodiments that are never linked together in the specification.” Pet., 25. But Samsung misapplies the law and mischaracterizes the ’366 patent. As is typical, the ’366 patent specification describes implementation options—not isolated embodiments—that enable the combinations of elements recited in the claims. And Samsung’s contentions regarding specific elements that are allegedly unsupported also fail. The ’366 patent provides written description support for all claims and elements.

Fourth, Samsung fails to demonstrate that it is more likely than not that the challenged claims would have been obvious. To start, Samsung’s contentions for many claims/claim elements are unsupported by expert testimony because Dr. Wolfe’s declaration addresses only a subset of the claim elements. Exhibit 1113,

which is a claim chart that Dr. Wolfe references only one time, is not in the form of an affidavit or declaration—i.e., it is unsigned and lacks the required perjury statement—and thus should not be given any weight. Therefore, Samsung’s arguments rely heavily on attorney argument, which is not evidence.

Next, Samsung fails to demonstrate that its proposed combination of Perego, Harris, and Amidi teaches “wherein the power delivered to the DIMM from the power rails of the system board is the *only* power received by the DIMM,” which is recited in the independent claims. Amidi teaches delivering power via a lithium-ion battery, which Samsung expressly includes in its proposed combination as shown below in Samsung’s annotated figure of its proposed combination:

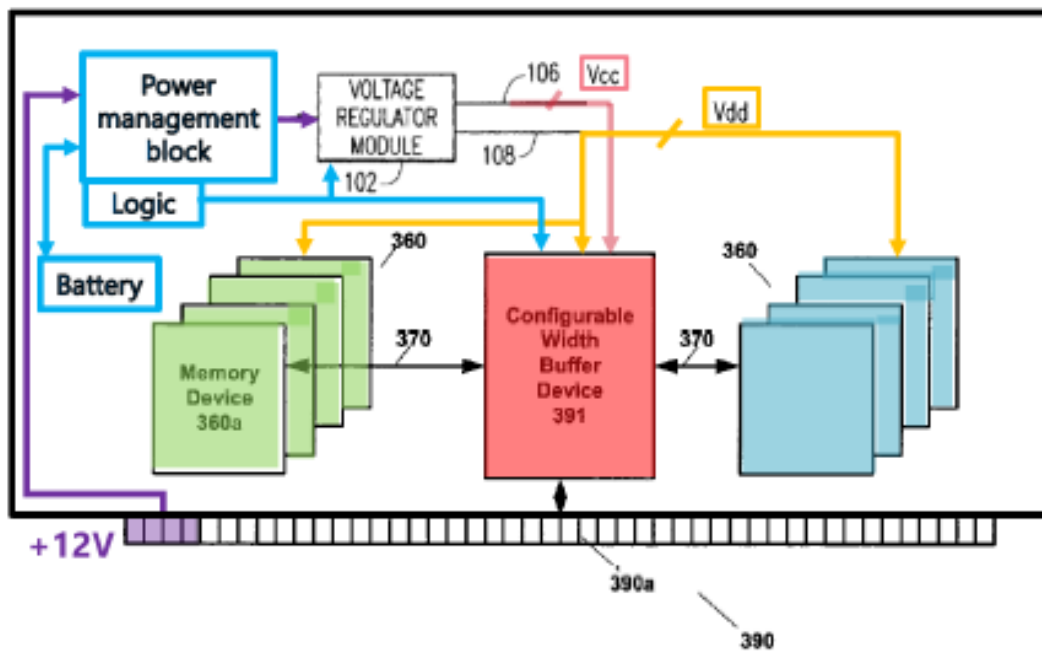


Fig. 3C

Pet., 52.

And, critically, Samsung fails to address known secondary considerations of non-obviousness, including its *own* prior licensing activities related to the '366 patent. In 2015, Samsung and Netlist entered into a joint development and license agreement (“JDLA”) to (among other things) develop the very technology that is described in the specification of the '366 patent. Samsung also took a license to Netlist’s IP portfolio, demonstrating that Samsung valued Netlist’s innovative technologies, particularly the technology described in the '366 patent. In its Petition, Samsung recounts its past PTAB challenges to patents in the same patent family as the '366 patent, boasting that it has invalidated several of the patents that it once licensed. But all of Samsung’s previous challenges were based on obviousness theories, and none of those cases considered objective evidence that Samsung licensed the relevant technology. This real-world evidence demonstrates that the claims of the '366 patent were not obvious.

Each of these reasons supports denying institution. In combination, they overwhelmingly show that the Director should not institute trial.

II. THE '366 PATENT

A. Summary

The '366 patent describes a memory module that includes a printed circuit board (PCB), a controller, double data rate (DDR) synchronous random access memory (SDRAM) devices, and converter circuits configured to deliver power via

regulated voltage lines. EX1001, FIGS. 12, 13, 16. The PCB includes edge connections electrically connected to a set of voltage supply lines that are configured to receive power delivered to the memory module. EX1001, 22:13-23. The controller is coupled to the PCB and an input voltage supply line of the set of voltage supply lines and includes a voltage monitor circuit that is configured to monitor an input voltage supplied by the voltage supply line, generate a trigger signal when the voltage exceeds a first threshold, and, in response to the trigger condition, write data into nonvolatile memory. EX1001, 25:23-45.

B. Level of Skill in the Art

At this stage of the proceeding, solely for the purpose of this preliminary response, Netlist adopts Samsung's proposed level of skill in the art. Netlist reserves the right to present a different level of skill in the art, if necessary.

III. THE PETITION FAILS TO NAME ALL REAL PARTIES IN INTEREST.

The Director should deny the Petition because it fails to name two real parties in interest (RPIs): Samsung Electronics America, Inc. ("SEA") and Avnet, Inc. ("Avnet"). "A petition filed under section 311 may be considered *only if* ... the petition identifies all real parties in interest." 35 U.S.C. § 312(a)(2) (emphasis added); *see also* 37 C.F.R. §§ 42.8(b)(1), 42.104. It is "Petitioner's burden to bring forth evidence or arguments demonstrating that it named all RPIs." *Yangtze Memory Techs. Co., Ltd. v. Micron Tech., Inc.*, IPR2025-00098, Paper 38 at 8

(PTAB Jan. 15, 2026) (informative) (citing *Worlds Inc. v. Bungie, Inc.*, 903 F.3d 1237, 1242 (Fed. Cir. 2018)). A petition that fails to name all RPIs cannot be considered, *Corning Optical Commc'ns RF, LLC v. PPC Broadband, Inc.*, IPR2014-00440, Paper 68 at 23-24 (PTAB Aug. 18, 2015) (precedential except § II.E.1); EX2024, 1, and thus should be denied.

“Determining whether a non-party is a ‘real party in interest’ ... takes into account both equitable and practical considerations, with an eye toward determining whether the non-party is a clear beneficiary that has a preexisting, established relationship with the petitioner.” *Applications in Internet Time, LLC v. RPX Corp.*, 897 F.3d 1336, 1351 (Fed. Cir. 2018) (“*AIT*”). Factors relevant for evaluating whether a party is an unnamed RPI include: (i) the relationship between the petitioner and the unnamed party; (ii) the unnamed party’s “interest in” and “benefit from” the IPR; (iii) whether petitioner can be said to be representing that interest; and (iv) whether the unnamed party desired review of the patent. *See RPX Corp. v. Applications in Internet Time, LLC*, IPR2015-01750, Paper 128 at 10-11 (PTAB Oct. 2, 2020) (precedential) (“*RPX*”) (listing factors).

“AIA proceedings should not be used by foreign adversaries,” like Samsung, “to harass American patentees,” like Netlist. EX2024, 4. Samsung, who has twice been found to willfully infringe Netlist patents, has repeatedly used the PTAB to attempt to avoid paying a fair price for its unauthorized use of Netlist’s patented

technology. *See* Netlist Discretionary Denial Brief (“DD Brief”), Paper 8 at 6.

Here, Samsung again attempts to avail itself of review before the PTAB but violates its statutory and regulatory obligation to name all RPIs in its Petition. The Director should apply *Corning* and deny institution.

A. Relevant Litigation History

On July 28, 2025, Netlist filed suit against Samsung Electronics Co., Ltd. (“SEC”), SEA, Samsung Semiconductor, Inc. (“SSI”), and Avnet in EDTX (25-cv-00748) asserting infringement of the ’366 patent. EX2043, 1. On May 20, 2025, the same three Samsung entities (SEC, SEA, and SSI) filed a complaint for declaratory judgment of non-infringement of U.S. Patent No. 12,308,087 in the District of Delaware (1:25-cv-00626). EX2064. On August 1, 2025, SEC, SEA, SSI, and Avnet filed a proposed amended complaint in the Delaware DJ action to add Avnet as a fourth DJ plaintiff and to add claims of non-infringement of the ’366 patent. EX2025, 1, 44-48 (¶¶148-157).

On September 30, 2025, Netlist filed an ITC complaint against the three Samsung entities (SEC, SEA, and SSI) and certain of Samsung customers, asserting six patents: the ’366 patent and U.S. Patent Nos. 9,824,035; 10,025,731; 10,217,523; 10,268,608; and 12,308,087. EX2015. Of the six asserted patents, the PTAB has already reviewed and upheld the validity of relevant claims in three of the patents:

- In IPR2022-00236, filed by Micron, the PTAB upheld claims 2 and 6 of the '035 patent. EX2058, 6.
- In IPR2023-00847, filed by Samsung, the PTAB upheld claims 1-5 of the related '608 patent, a decision the Federal Circuit affirmed. *Samsung Elecs. Co. v. Netlist, Inc.*, IPR2023-00847, Paper 42 at 73 (PTAB Dec. 10, 2024), *aff'd*, No. 25-1378, Dkt. No. 33 (Fed. Cir. Dec. 9, 2025).
- In IPR2022-00063, filed by Samsung, the PTAB upheld claims 1-34 of the '523 patent, a decision the Federal Circuit affirmed. *Samsung Elecs. Co. v. Netlist, Inc.*, IPR2022-00063, Paper 53 at 58 (PTAB May 3, 2023), *aff'd*, No. 23-2133, Dkt. No. 44 (Fed. Cir. Mar. 5, 2025).

On November 7, 2025, Samsung filed the Petition in this IPR listing SEC as the Petitioner and SSI as an RPI. Pet., 1.

On December 29, 2025, following a delay due to the government shutdown, the ITC instituted the investigation (337-TA-1472). EX2054.

B. SEA is an unnamed RPI.

SEA is an unnamed RPI: it “is a clear beneficiary that has a preexisting, established relationship with the petitioner” SEC and with real party in interest SSI. *AIT*, 897 F.3d at 1351. Taking those requirements in reverse order, SEA indisputably has a preexisting, established relationship with both SEC and SSI. According to Samsung, “SSI is a wholly-owned subsidiary of SEA, which itself is

a wholly-owned subsidiary of SEC.” EX2027, 1. Netlist alleges that, collectively, the three Samsung entities import and/or sell within the United States after importation certain products that infringe the ’366 patent (and the other patents asserted in the ITC). EX2015, 7 (¶24).

SEA would also plainly benefit from review and potential invalidation of the ’366 patent in this proceeding. As a defendant in the co-pending EDTX case and a respondent in the ITC investigation, SEA would benefit from the expedited review afforded by an IPR, which applies a more favorable burden of proof for invalidity than district courts and the ITC (preponderance vs. clear and convincing) and (if successful) could allow Samsung to avoid district court damages and an ITC import ban of the accused memory products. EX2043; EX2015, 2. SEA’s voluntary participation as co-plaintiff in the Delaware DJ action is particularly telling because (i) Samsung had control over which parties to name and chose to include SEA and (ii) in doing so, Samsung represented to the Delaware court that “[a]n immediate, real, and justiciable controversy exists between Samsung [including SEA] and Netlist as to whether Samsung has infringed the ’366 patent.” EX2025, 5 (¶18); *see id.*, 48 (¶156). SEA has a significant stake in the outcome of this IPR and would clearly benefit if the PTAB were to invalidate the claims of the ’366 patent.

The relevant *RPX* factors also show that SEA is an unnamed RPI. As to factor (i), SEA is a subsidiary of SEC and parent of SSI, and therefore clearly has an established relationship with both Samsung entities. As to (ii), SEA's involvement in three co-pending litigations demonstrates it has a significant stake and would benefit from a favorable outcome in this IPR. As to (iii) and (iv), SEC (as parent) and SSI (as subsidiary) are plainly representing the interests of SEA—in particular, its interest in avoiding liability for infringement by attempting to invalidate the asserted patent. *See RPX*, IPR2015-01750, Paper 128 at 27.

That Samsung has moved to dismiss SSI and SEA from the EDTX case for alleged improper venue does not change the RPI analysis. *See EX2061*. The issues of whether venue is proper in EDTX and whether SEA is an RPI to this proceeding are different legal and factual analyses. Venue is governed by 28 U.S.C. § 1400(b), which asks “where the defendant resides, or where the defendant has committed acts of infringement and has a regular and established place of business.” RPI, by contrast, “takes into account both equitable and practical considerations, with an eye toward determining whether the non-party is a clear beneficiary that has a preexisting, established relationship with the petitioner.” *AIT*, 897 F.3d at 1351. The RPI analysis is not limited to a specific district court venue, such as EDTX. And thus even if venue is not properly sited for a given defendant, it does not follow that the defendant fails to qualify as an RPI.

SEA is a perfect example. In its motion to dismiss, Samsung raises three arguments: (1) neither SSI¹ nor SEA resides in Texas, (2) SSI has no regular and established place of business in EDTX, and (3) Netlist fails to plausibly allege an act of infringement by SEA in EDTX. EX2061, 5-10. Even if Samsung were to prevail on *all* three arguments, which it should not, SEA is still an RPI to this proceeding. Samsung's first two arguments are geographically limited to Texas and thus have no bearing on the RPI inquiry. Its third argument is limited to *SEA's* alleged non-infringement. Even if SEA does not infringe in EDTX, which Netlist does not concede, Samsung's argument does not extend to SEC and SSI. Because SEA has preexisting, established relationships with both, the RPI inquiry is still at issue in light of the EDTX case against SEC and SSI. And, if there were any doubt, the Delaware DJ action and the ITC case confirm that SEA is an unnamed RPI.

Finally, Samsung is the leading petitioner in AIA challenges and has named SEA as an RPI on close to 800 petitions. EX2020, 48; EX2028. Samsung knew it failed to fulfill the requirement for naming all RPIs because Netlist has raised this issue in its discretionary denial brief and in multiple related proceedings. *See, e.g.,*

¹ Samsung's arguments regarding SSI also demonstrate that venue and RPI are different issues. Samsung admits SSI as an RPI here but alleges that venue in EDTX is improper for SSI.

DD Brief, 14-16. Yet Samsung has made no attempt to meet its burden to demonstrate it named all RPIs, nor can it with the clear-cut evidence that SEA is an RPI. *See Yangtze*, IPR2025-00098, Paper 38 at 8 (when the identification of RPIs is in dispute, Petitioner has the burden to demonstrate it named all RPIs).

C. Avent is an unnamed RPI.

Avnet is also an unnamed RPI: it “is a clear beneficiary that has a preexisting, established relationship with the petitioner” SEC and RPI SSI. *AIT*, 897 F.3d at 1351. All agree that Samsung and Avnet have a preexisting, established relationship: according to Samsung, Avnet is Samsung’s customer. EX2025, 2 (¶2). But more than that, Avnet is a distributor of Samsung’s memory products, EX2047, EX2048, and, as such, is a co-defendant in the EDTX litigation, EX2043, 1. Critically, Avnet is also a co-plaintiff in the Delaware DJ action, and has represented to that court that there exists an “immediate, real, and justiciable controversy” as to whether it infringes the ’366 patent. EX2025, 48 (¶156). Given its involvement in these cases, Avnet would clearly benefit from this proceeding (e.g., seeking to avoid liability for infringement).

Like the analysis for SEA, the *RPX* factors also demonstrate Avnet is an unnamed RPI. It has an established relationship with Petitioner SEC and RPI SSI. It has a clear “interest in” and “benefit from” this IPR (e.g., seeking to avoid liability for infringement). Petitioner, as Avnet’s supplier, is representing Avnet’s

interest. And Avnet clearly desires review of the '366 patent, as evidenced by Avnet's participation in the Delaware DJ action. Avnet is plainly coordinating with Samsung in defending against infringement of the '366 patent, including Samsung's attempt to invalidate the claims of the '366 patent. Therefore, Avnet is an RPI and Samsung violated the statute and rules by failing to name Avnet as an RPI in the Petition.

D. The Director should deny the Petition.

The Director should not consider the Petition because it fails to name all RPIs. *Corning*, IPR2014-00440, Paper 68 at 23-25; *Yangtze*, IPR2025-00098, Paper 38 at 8. In this case, the correct remedy is to terminate the proceeding.

Samsung does not seek to correct its Petition to name SEA and Avnet as RPIs. Nor should it be permitted to do so. First, no good cause exists for correction. Samsung knew that (i) SEA and Avnet are co-defendants in EDTX and co-plaintiffs in Samsung's Delaware DJ action and (ii) that SEA is a respondent in the ITC investigation *before* it filed the Petition in November 2025. Samsung simply (and incorrectly) chose not to list SEA and Avnet as RPIs in this proceeding, despite its statutory and regulatory obligation to do so.

Second, Samsung has made no effort to correct its Petition, and, at this point, any request for correction would not be timely. Netlist put Samsung on notice that Samsung failed to meet its RPI obligations in related IPRs in early December

2025, *see* IPR2025-01402, Paper 12 at 8-17, and that Samsung failed to meet its

RPI obligation *in this proceeding* in mid-December 2025, *see* IPR2025-01402,

Paper 17 at 2-3. Samsung has thus been on notice for more than two months.

Despite the evidence to the contrary, Samsung's position has been that SEA and

Avnet are not RPIs to these proceedings (i.e., the six PGR/IPRs that Samsung has

filed against the patents that Netlist asserted at the ITC). *See* IPR2025-01402,

Paper 16 at 1-4.

Third, in this case, it would be futile to accord a new filing date² and restart this proceeding because of the state of the co-pending ITC investigation. Again, the ITC instituted the investigation on December 29, 2025. EX2054. On February 5, 2026, ALJ McNamara issued an amended adopted procedural schedule setting the date for the evidentiary hearing (trial) in late November / early December 2026, the final initial determination on May 3, 2027, and the target date on September 3, 2027. EX2062. The Director's decision on institution (DI) here is due May 20,

² *Corning* explains that "any Petition corrected to disclose additional RPIs must be given a new filing date." IPR2014-00440, Paper 68 at 23; *see also Aylo Freesites Ltd. v. Dish Techs. L.L.C.*, IPR2024-00940, Paper 75 at 3 (PTAB Feb. 3, 2026) ("Petitioner's correction to disclose additional RPIs requires according the Petition a new filing date"; de-designating prior conflicting precedent).

2026. According a new filing date and restarting this proceeding, if even possible, would potentially push the DI due date out for another six months, to the end of November 2026. In that case, the FWD would be due at the end of November 2027, which is well past all the key milestones in the ITC investigation. *Fintiv* and other discretionary considerations would favor denial even more strongly than they do now, *see* DD Brief,³ and thus restarting this proceeding would unnecessarily expend the PTAB's and the parties' limited resources to redo the pre-institution phase of a proceeding that plainly should be denied under *Fintiv*.

Finally, it would be extremely prejudicial to a patent owner to change the filing date and restart the proceeding, if even possible. Correction of a petition at this late stage would allow the petitioner to see all of the patent owner's arguments (including discretionary briefing) before the proceeding was restarted. That is, because the briefing deadlines are triggered based on the Notice of Filing Date Accorded, it would permit the petitioner a second bite at the apple and open the door to gamesmanship and road mapping based on all the arguments that a patent owner included in its discretionary denial briefing and preliminary response.

³ Netlist maintains that the discretionary considerations overwhelmingly favor denying the Petition without even reaching the merits/non-discretionary considerations. *See generally* DD Brief.

Further, it would drive up costs to the patent owner because the patent owner would have to expend resources to defend itself again. Because circumstances that may affect the analysis (particularly on discretionary issues) will have changed based on any new later filing date, simply relying on the already-filed briefing would not be sufficient.

Because Samsung fails to identify all RPIs, including SEA and Avnet, and does not seek (nor should it be permitted to seek) correction, the Director should deny the Petition.

IV. SAMSUNG PRESENTS INCONSISTENT CLAIM CONSTRUCTIONS.

Samsung carries the burden to explain “how the challenged claim is to be construed” and “how the construed claim is unpatentable.” 37 C.F.R.

§§ 42.104(b)(3)-(4). Samsung alleges no terms need to be construed. Pet., 21-22.

Nevertheless, in its Petition, Samsung presents narrow, implicit constructions of certain claim elements to allege (incorrectly) that the claim elements lack written description support. *See* Pet., 28-46. In its Petition, Samsung routinely seeks to read limitations into the challenged claim elements to allege they lack support. *Id.* Samsung’s narrow, implicit constructions are inconsistent with its position here that no terms need to be construed, and thus the Director should deny institution under *Revvo* and *Tesla*. *Revvo Techs., Inc. v. Cerebrum Sensor Techs., Inc.*, IPR2025-00632, Paper 20 (PTAB Nov. 3, 2025) (precedential) (“*Revvo I*”); *Tesla*,

Inc. v. Intellectual Ventures II LLC, IPR2025-00340, Paper 18 (PTAB Nov. 5, 2025) (informative); *see also Revvo Techs., Inc.*, IPR2025-00632, Paper 36, 2 (PTAB Jan. 26, 2026) (“*Revvo II*”).

V. SAMSUNG’S PGR-ELIGIBILITY AND WRITTEN-DESCRIPTION ARGUMENTS FAIL.

Samsung contends that the ’366 patent is PGR-eligible because (1) the issued claims allegedly lack written description support in the pre-AIA priority application, Pet., 4-5 (relying on contentions in Ground 1 as support for PGR eligibility); and (2) claims submitted during prosecution but later amended lacked written description support, Pet., 5-6. Samsung’s contentions fail on both counts. The ’366 patent claims have written description support and Samsung has not shown that any intermediate claims lacked support.

During prosecution of the ’366 patent, the examiner thoroughly vetted the claims for written description support. A Final Rejection rejected the claims *inter alia* under §112, first paragraph. EX1002, 1263-67. Applicant submitted amended claims in response, along with a “Claim Support Table.” *See* EX1002, 1398-1481 (Amendment & Table), 1503-20 (Supplemental Amendment). The Examiner then issued a Notice of Allowance, noting that “Applicant has overcome the 112 rejection.” EX1002, 1536. Applicant subsequently further amended the claims and filed an RCE. EX1002, 1544-66. The Examiner determined that the further amended claims were not in condition for allowance, but “if the claim[s are] re-

stored to the previously allowed version ..., the[y] would be in condition for allowance.” EX1002, 1606 (Interview Summary entered with the Notice of Allowance); *see also* 1589-1604. These claims, *for which the examiner expressly considered 112 written description support* (EX1002, 1536), issued as the ’366 patent claims. The examiner’s consideration of written description support during prosecution is evident.

Samsung’s contentions that the claims lack written description support fail. Simply because the claims are long and detailed does *not* mean they lack support. In general, Samsung’s arguments take an overly restrictive view of both the written description requirement and the claim language, ignoring that a “patent specification is directed to one of ordinary skill in the art,” *Wang Labs., Inc. v. Toshiba Corp.*, 993 F.2d 858, 866 (Fed. Cir. 1993), and that written description support is analyzed from the perspective of that POSITA, *Ariad Pharms., Inc. v. Eli Lilly & Co.*, 598 F.3d 1336, 1351 (Fed. Cir. 2010) (en banc) (emphasis added).

First, Samsung relies on the same analysis both for PGR eligibility and written description, without acknowledging that different dates should be used to assess the level of skill in the art. *Second*, Samsung’s general contentions regarding the lack of disclosure of the specifically claimed embodiments are legally and factually flawed. *Third*, Samsung’s contentions regarding the alleged insufficient disclosure of specific limitations also have no merit. *Finally*, as to the intermediate

claims, Samsung provides no explanation regarding their alleged lack of support beyond a conclusory unsupported assertion that Netlist conceded as much during prosecution.

Because Samsung has not shown any of the claims lack written description support, and because Samsung's contentions regarding the intermediate claims are insufficient, Samsung has not shown the claims are eligible for PGR or that it is more likely than not that any claims are unpatentable for lack of written-description support. 35 U.S.C. § 324(a).

A. Samsung's analysis is flawed because it does not acknowledge the different dates for assessing written description.

Samsung relies on its analysis in Ground 1 for its contention that the patent is PGR-eligible. *See* Pet., 5. Samsung does not acknowledge or address, however, that the analyses for these two inquiries are not necessarily assessed as of the same date. *See Reiffin v. Microsoft Corp.*, 214 F.3d 1342, 1346 (Fed. Cir. 2000) ("the sufficiency [of a disclosure] under § 112, first paragraph must be judged as of its filing date."). For determining whether the '366 patent is entitled to the pre-AIA priority date, and thus, whether the application is PGR-eligible, the written description analysis must be performed in view of the state of the art and the knowledge of a POSITA before March 16, 2013. But if the '366 patent claims are not entitled to this earlier filing date (which Netlist does not concede), and the '366 patent is thus PGR-eligible, these claims could still find written description support

as of a later date, such as the January 24, 2022 filing date of the '366 patent.

Samsung does not acknowledge this distinction or present any evidence or testimony as to the state of the art or the level of skill as of January 24, 2022. It is Samsung's burden to do so. *Harmonic Inc. v. Avid Tech., Inc.*, 815 F.3d 1356, 1363 (Fed. Cir. 2016) (A "petitioner has the burden from the onset to show with particularity why the patent it challenges is unpatentable."). Samsung, therefore, cannot meet its burden under 35 U.S.C. § 322(a) with respect to Ground 1.

B. Samsung's general contentions regarding the lack of disclosure of the specifically claimed embodiments are legally and factually flawed.

1. Contrary to Samsung's contentions, there is no requirement to describe every possible combination or embodiment to provide written description.

Samsung contends the claims do not meet the written description requirement because "there is no disclosure of the *specific combination* of *all* the limitations required by each independent claim." Pet., 26. But Samsung's argument is premised on an incorrect interpretation of what is legally required for written description. Rather, "the test for sufficiency [of written description] is whether the disclosure of the [earlier] application relied upon *reasonably conveys to those skilled in the art* that the inventor had possession of the claimed subject matter" as of that earlier filing date. *Ariad Pharms.*, 598 F.3d at 1351 (emphasis added). The "level of detail required to satisfy the written description requirement *varies*

depending on the nature and scope of the claims and on the complexity and predictability of the relevant technology.” *Id.* (emphasis added); *see also Capon v. Eshhar*, 418 F.3d 1349, 1357-58 (Fed. Cir. 2005) (“The ‘written description’ requirement must be applied in the context of the particular invention and the state of the knowledge As each field evolves, the balance also evolves between what is known and what is added by each inventive contribution.”); *Union Oil Co. of Cal. v. Atl. Richfield Co.*, 208 F.3d 989, 997 (Fed. Cir. 2000) (“The written description requirement does not require the applicant ‘to describe exactly the subject matter claimed, [instead] the description must clearly allow persons of ordinary skill in the art to recognize that [he or she] invented what is claimed.’” (internal citations omitted)).

2. The ’366 patent links the various disclosed embodiments.

According to Samsung, “[a] patent owner cannot show written description support by picking and choosing claim elements from different embodiments that are never linked together in the specification.” Pet., 25 (quoting *Flash-Control, LLC v. Intel Corp.*, No. 20-2141, 2021 WL 2944592, at *4 (Fed. Cir. July 14, 2021) (nonprecedential)). Unlike *Flash-Control*, however, the ’366 patent recognizes that various combinations of the disclosed features may be implemented by a POSITA. In particular, the specification states:

While embodiments and applications have been shown and described, *it would be apparent to those skilled in the art* having the benefit of

this disclosure *that many more modifications than mentioned above are possible* without departing from the inventive concepts disclosed herein.

EX1001, 38:26-30 (emphasis added). The specification also recognizes that:

It will, of course, be appreciated that in the development of any such actual implementation [of the invention], numerous implementation-specific decisions must be made in order to achieve the developer's specific goals, such as compliance with application- and business-related constraints, and that these specific goals will vary from one implementation to another and from one developer to another. Moreover, it will be appreciated that such a development effort might be complex and time-consuming, but would nevertheless be a routine undertaking of engineering for those of ordinary skill in the art having the benefit of this disclosure.

EX1001, 10:28-38.

The specification also notes:

Example embodiments are described herein in the context of a system of computers, servers, controllers, memory modules, hard disk drives and software. Those of ordinary skill in the art will realize that the following description is illustrative only and is not intended to be in any way limiting. *Other embodiments will readily suggest themselves to such skilled persons* having the benefit of this disclosure....

EX1001, 10:14-21 (emphasis added).

A POSITA would recognize that not every paragraph starting with, e.g., “In accordance with one embodiment,” would be separate embodiments, but rather that each disclosure is meant to be used together as appropriate “to achieve the developer’s specific goals.” EX1001, 10:28-34. Indeed, all of the claim limitations are described at least in the context of the disclosed memory system 1010 including power module 1100. Thus, contrary to Samsung’s implication otherwise, the ’366 patent does link the various disclosed embodiments and suggests the various disclosed aspects can be used together in different combinations.

3. Samsung’s “laundry list” case law is inapposite because it focuses on the chemical and biological arts.

Citing *Fujikawa*, Samsung contends that “[a] patent that provides ‘a “laundry list” disclosure’ does not provide adequate written description of every possible combination because ‘such a disclosure would not “reasonably lead” those skilled in the art to any particular species.’” Pet., 24-25. In Samsung’s cited cases, however, the claims are directed to the chemical and biological arts where the disclosures at issue included, for example, large numbers of possible combinations of various chemical components.

For example, in *Fujikawa*, the disclosed compound included four independently substitutable R-groups, two of which could be substituted for a ring including three additional independently substitutable R-groups. *Fujikawa v. Wattanasin*, 93 F.3d 1559, 1570 (Fed. Cir. 1996). The claim at issue was directed

to non-preferred compounds from the disclosure, and the description “contained no blazemarks as to what compounds, other than those disclosed as preferred, might be of special interest.” *Id.* at 1571.

Similarly, in *Regents*, the relevant disclosure included “a compendium of common organic chemical functional groups, yielding a laundry list disclosure of different moieties for every possible side chain or functional group” where “the listings of possibilities are so long, and so interwoven, that it is quite unclear how many compounds actually fall within the described genera and subgenera.” *Regents of the Univ. of Minn. v. Gilead Scis., Inc.*, 61 F.4th 1350, 1357 (Fed. Cir. 2023).

Likewise, in *Purdue Pharma*, the disclosure did not provide any indication to a POSITA regarding which of a multitude of pharmacokinetic parameters were important to the invention, thus there was not sufficient disclosure of the claimed parameter ratio, even though some examples happened to fall within the claimed ratio. *Purdue Pharma L.P. v. Faulding Inc.*, 230 F.3d 1320, 1326 (Fed. Cir. 2000).

And in *Novozymes*, the claim at issue was directed to a particular alpha-amylase variant having particular thermostability properties, the combination of which was nowhere described in the disclosure. *Novozymes A/S v. DuPont Nutrition Biosciences APS*, 723 F.3d 1336, 1348-49 (Fed. Cir. 2013). In each of these cases, the technology was in the unpredictable arts and there was no guidance

in the specification to arrive at the particular claimed species or sub-genus.

Here, on the other hand, the claims are directed to a dual in-line memory module (DIMM)—in the field of electronics. The disclosure here “reasonably conveys to those skilled in the art that the inventor had possession of the claimed subject matter.” *Ariad Pharms.*, 598 F.3d at 1351.

C. Samsung’s contentions regarding specific limitations also fail.

Samsung also contends there is no written description support for specific limitations. *Pet.*, 27-46. These arguments likewise fail. In general, they take an impermissibly narrow view of the disclosure that is divorced from how a skilled artisan would have understood the ’366 patent’s teachings. According to Samsung, the skilled artisan was an accomplished engineer who had experience with DRAM memory technologies and was familiar with essentially anything relevant to the ’366 patent. *See Pet.*, 20-21.

As explained below, there is sufficient written description support for the limitations identified by Samsung. Indeed, written description support for certain identified limitations was expressly considered by the examiner during prosecution and found to be sufficient. Netlist focuses on claim 1 for purposes of the discussion herein. But a similar analysis would apply to the other identified claims. Indeed, Samsung addresses the claims together in the written description analysis and does

not identify any differences between the various claims that would affect the analysis.

1. The disclosure supports the “at least” claim language.

Samsung contends the use of “at least” language in the claims is an attempt “to try to encompass infinite possible combinations.” Pet., 27. For example, claim element [1.j.2] recites: “the total number of data conduits is at least 72 data conduits.” EX1001, 40:4-5. Relying on *CSIRO*, Samsung argues “Netlist’s attempt to encompass 80 bits by claiming ‘at least 72,’ for example, merely highlights the lack of written description” because, according to Samsung, there is “no written description for ‘at least’ with no upper limit.” Pet., 28.

First, Samsung’s reliance on *CSIRO* is misplaced. In *CSIRO*, the specification described the amount of a claimed ingredient as being limited to a range of 1-4.7%, whereas the claim recited “at least 1%” of that ingredient (i.e., 1% up to a maximum of 99%). See *CSIRO v. BASF Plant Sci. Co.*, PGR2020-00057, Paper 9 at 21-23 (PTAB Oct. 15, 2020) (relying on *In re Wertheim*, 541 F.2d 257, 263-64 (CCPA 1976)). No such express upper limit exists in the ’366 specification. Rather, the specification describes an exemplary data bus of 72-bits, but also contemplates that “other embodiments comprise data buses and/or data slices of different sizes,” including, for example, up to 256-bits. EX1001, 35:60-36:2 (emphasis added); see also EX1002, 1442 (pointing to this paragraph, among

others, as support for this claim limitation during prosecution); EX1001, 21:49-53 (memory systems having different “widths” including up to 256-bits “are compatible with embodiments described herein.”).

And Samsung’s position that a claim reciting “at least” with no upper limit is *per se* invalid takes too strict a view of the legal requirement for written description of such open-ended claims. Indeed, Samsung itself recognizes that use of the phrase “at least” is common in patent claim drafting, as many of Samsung’s own patents use this phrase in the claims. *See, e.g.*, U.S. Patent Nos. 11,503,749 (“a display panel comprising *at least* one pixel” (EX2065, claim 1 (emphasis added))); 11,688,928 (“wherein the voltage is applied to *at least* one conductive via of the plurality of conductive vias and *at least* one conductive via pads of the plurality of conductive via pads” (claim 4 (emphasis added))); 10,904,418 (“capturing view in an electronic device including *at least* two image sensors” (EX2067, claim 1 (emphasis added))); 10,623,675 (“plurality of pixels including *at least* one autofocus pixel and *at least* one normal pixel” (EX2068, claims 1 and 11 (emphasis added))); 12,288,001 (EX2069); 12,488,249 (EX2070). Samsung’s own patents would be rendered invalid under its interpretation of the law.

As the Federal Circuit has recognized, “[o]pen-ended claims are not *inherently improper*; as for all claims their appropriateness depends on the particular facts of the invention, the disclosure, and the prior art. They may be

supported if there is an inherent, albeit not precisely known, upper limit and the specification enables one of skill in the art to approach that limit.” *Andersen Corp. v. Fiber Composites, LLC*, 474 F.3d 1361, 1376–77 (Fed. Cir. 2007) (internal quotations omitted; emphasis added). Here, a POSITA would have understood that the recitation of “at least 72 data conduits,” which correspond to the recited “data lines,” would not have an infinite upper limit, but would rather be limited to a technologically feasible upper limit. *See, e.g., FS.com Inc. v. Int’l Trade Comm’n*, 65 F.4th 1373, 1375–77 (Fed. Cir. 2023) (affirming the ITC’s determination that a POSITA would have understood the inherent upper limit of an open-ended claim term to be that above which would have been technologically infeasible as of the priority date).

Samsung’s position is entirely premised on its contention that the claims are *per se* invalid, which as discussed is incorrect. Samsung presents no evidence or argument that a POSITA would not have understood there to be an inherent upper limit of these claim terms. Samsung simply has not met its burden “to show with particularity why the patent it challenges is unpatentable.” *Harmonic Inc.*, 815 F.3d at 1363.

2. **The disclosure supports “enabling a first group of DDR SDRAM ‘in response to the first chip select signal ... independently of whether the second group of DDR SDRAM devices is enabled.’”**

Claim element [1.i.2] recites:

the first group of DDR SDRAM devices is configured to be enabled, in response to the first chip select signal, to receive or output at least 40 1-bit DDR data signals in parallel via at least 40 data lines of the set of data lines independently of whether the second group of DDR SDRAM devices is enabled, in response to the second chip select signal, to receive or output an integer number of 1-bit DDR data signals in parallel via an integer number of data lines of the set of data lines.

EX1001, 39:54-63.

Samsung’s written description arguments are premised on its theory that the ’366 patent only discloses independent chip selection in the context of backup/restore operations and not during “normal operation.” *See* Pet., 28-37. These arguments are not commensurate with the scope of the claims because the claims do not include this specific language regarding “normal operation.” Rather, the claims are agnostic as to whether the independent chip selection of element [1.i.2] occurs during backup, restore, or normal operation. Instead, the claims recite that element [1.i.2] must occur:

when power from the power rails of the system board is provided to the DIMM and each group of the first and second groups of DDR SDRAM devices is not in self-refresh mode.

EX1001, 39:50-53 (element [1.i.1]). Samsung's arguments view backup/restore operations and normal operations as a binary choice, with backup/restore operations being triggered only in response to a power failure and normal operations occurring when power from the system rails is provided to the DIMM. But the patent also teaches a "second state" of operation of the power module 1100, as one example in which power is still supplied from the power rails of the system even though a trigger condition has occurred. In other words, contrary to Samsung's arguments, power failure is not the only trigger condition. *See, e.g.*, EX1001, 24:27-31 ("For example, the non-volatile memory subsystem 1040 may backup the volatile memory subsystem 1030 in the event of a trigger condition, such as, for example, a power failure or power reduction or a request from the host system.").

As described in the '366 specification, "power module 1100 provides a plurality of voltages to the memory system 1010 comprising non-volatile and volatile memory subsystems 1030, 1040." EX1001, 28:17-19. "The power module 1100 can be configured to be operated" in different "states." EX1001, 28:40-41. For example, "[i]n a first state, the first voltage 1102 is provided to the memory system 1010 from the input 1106," i.e., "from system." EX1001, 28:41-43, FIG. 16. In a second state of the power module, input 1106 is provided as voltage 1108 to first power element 1130 which in turn provides voltage 1110 to conversion

element 1120, which in turn provides first voltage 1102 to the memory system 1010. EX1001, 28:30-33, 28:45-48, FIG. 16. In this second state, power module 1100 modulates (via power element 1130) and converts (via conversion element 1120) the input 1106, but power is still provided from the system rails. EX1001, 28:30-33, 29:34-39.

The '366 patent further discloses:

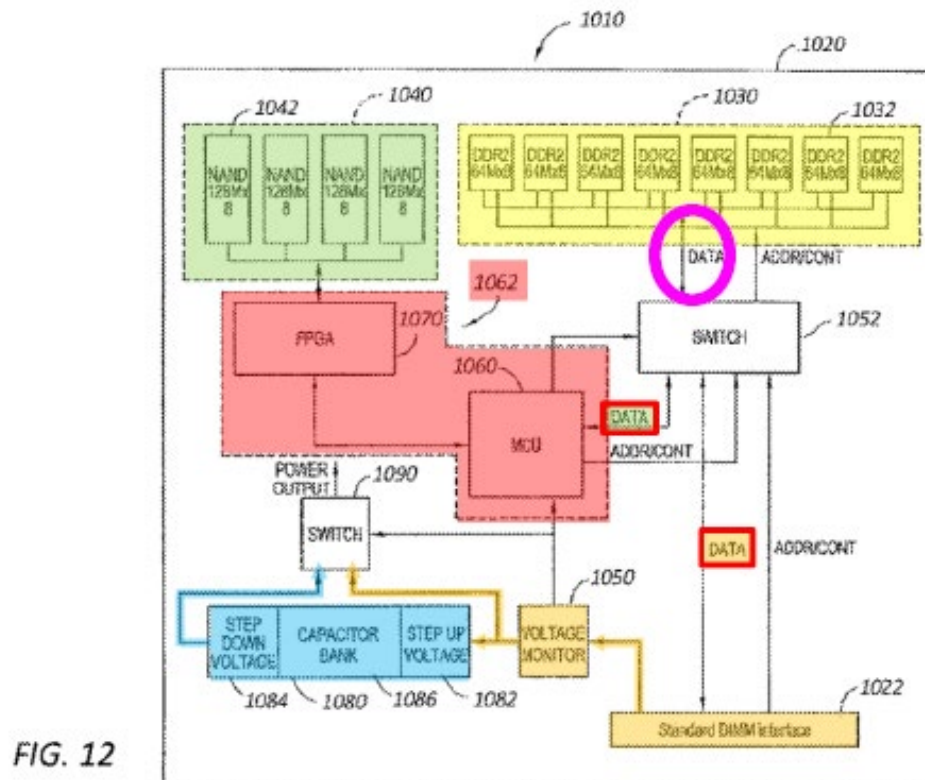
In certain embodiments, the power module 1100 transitions from the first state to the second state upon detecting that a trigger condition *is likely to occur* and transitions from the second state to the third state upon detecting that *the trigger condition has occurred*. For example, the power module 1100 may transition to the second state when it detects that *a power failure is about to occur* and transitions to the third state when it detects that *the power failure has occurred*.

EX1001, 28:53-61 (emphases added). The '366 patent explains that using this second state of the power module is beneficial because it “allows a smoother transition from the first state to the third state,” “has capacitive and other smoothing effects,” and “can smooth out potential voltage spikes.” EX1001, 28:61-29:5. Thus, contrary to Samsung’s arguments, the '366 patent provides support for backup operations initiated while the DIMM is powered by the system board, i.e., prior to or without any such as loss of power occurring. *See* EX1001, 24:24-49 (describing various uses of system backup, not limited to during a power failure). Samsung’s argument that there is no disclosure of backup operations during a

“normal operation”—which, again, is not recited in the claims—ignores this disclosure.

Samsung also argues that written description support for this claim element cannot come from the discussion of the backup functionality because the claims require that the components on the DIMM (e.g., volatile memory) are “‘enabled...to receive or output...data signals...via...the set of data lines’ that are ‘electrically connected to the second set of edge connections [part of the orange “Standard DIMM Interface” 1022 ...]’ leading to the host computer.” Pet., 30-31. As a preliminary matter, the condition is met in the second state of the power module described above. *See* EX1001, 28:29-33, 28:45-48, Fig. 16 (DRAMs powered via power element 1130 that derives its power from the power rail in the power module’s second state). Second, Samsung’s argument is not commensurate with the scope of the claims. The claim does not require the claimed data signals to be sent to the edge connections as part of element [1.i.2]. Rather, the claim requires only (1) that “a set of data lines [is] electrically connected to the second set of edge connections” in element [1.b.7] and (2) that “the first group of DDR SDRAM devices is configured to be enabled ... to receive or output at least 40 1-bit DDR data signals in parallel via at least 40 data lines of the set of data lines” in element [1.i.2]. The claim does not include a recitation of where the “data *signals*” in element [1.i.2] are received from or output to. Samsung’s argument improperly

combines two separate limitations in a way not required by the claim. Samsung's annotated version of Figure 12 is reproduced below and further annotated to include the pink circle. As shown, the set of data lines (circled in pink) exiting volatile memory subsystem 1030 are "electrically connected to the second set of edge connections" via switch 1052. And the volatile memory can send and receive data signals via the set of data lines.



EX1001, FIG. 12 (annotated at Pet., 29; pink circle added).

3. The disclosure supports “each component of the set of components...receives power only via the one or more of the first, second, third, and fourth regulated voltage lines.”

Claim element [1.g.3] recites:

[wherein each component of the set of components] receives power only via the one or more of the first, second, third, and fourth regulated voltage lines.

EX1001, 39:37-41.

Samsung argues:

There is also no support in the specification that “the set of components” on the DIMM memory module (including the volatile DDR SDRAM memory) “receives power only via the one or more of the first, second, third, and fourth regulated voltage lines,” *see* limitations [1.g.3], [16.g.3], [29.g.3], and certainly not during normal operations (when there is no power failure) as required by the claims.

Pet., 37. However, as discussed above, during the “second state” of operation of the power module 1100, the input 1106 is provided as voltage 1108 to first power element 1130, which in turn provides voltage 1110 to conversion element 1120, which in turn provides first voltage 1102 to the memory system 1010. EX1001, 28:30-33, 28:45-48, FIG. 16. This first voltage 1102 provided in the second state of power module operation corresponds to one of the “regulated voltage” lines identified by Samsung, as shown circled in pink in the below further-annotated version of Petitioner’s annotated Figure 16.

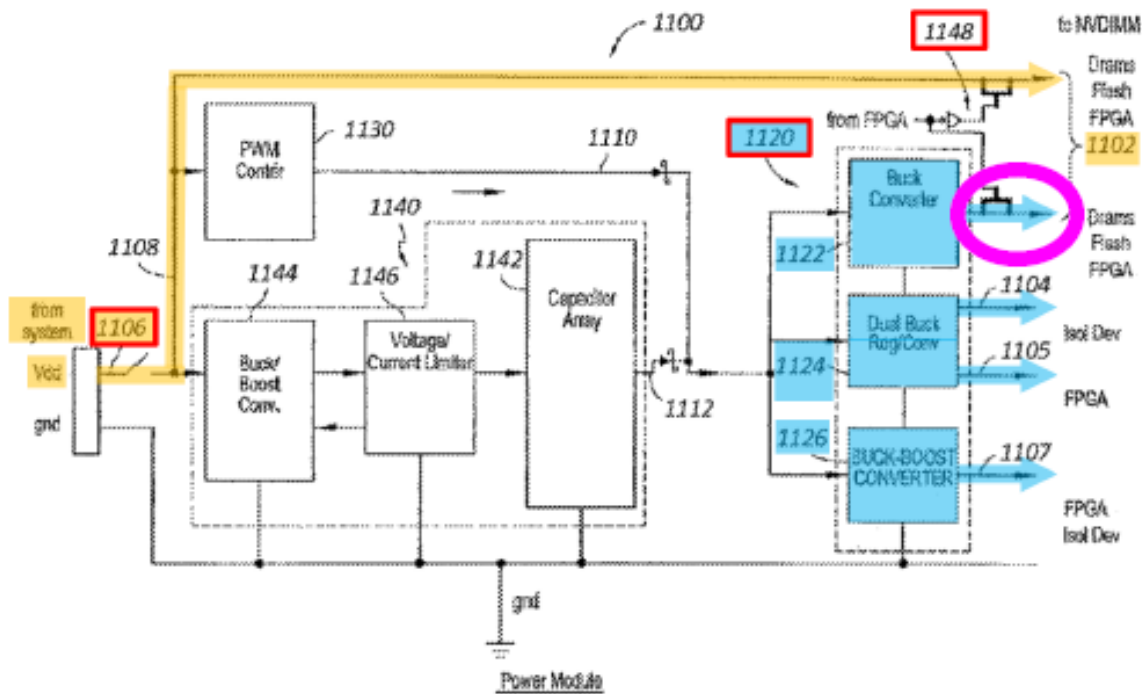


FIG. 16

EX1001, FIG. 16 (annotated at Pet., 38; pink circle added).

Thus, in this second state of the power module's operation, "each component of the set of components...receives power only via the one or more of the first, second, third, and fourth regulated voltage lines," as the claims require. Again, Samsung's arguments ignore this second state of the power module's operation. *See* Pet., 37-43. There is support in the disclosure for receiving power only from the respective regulated voltage lines.

- 4. The disclosure supports “an additional trigger condition occurs when the input voltage is above the first threshold and below the second threshold.”**

Claim element [13.a.1] recites:

when power from the power rails of the system board is provided to the DIMM, an additional trigger condition occurs when the input voltage is above the first threshold and below the second threshold.

EX1001, 41:15-19.

For this dependent claim, Samsung effectively admits the claim has written description support. *See* Pet., 43-46. Samsung identifies “three possible ways to interpret the claim language,” without advocating for any one of the interpretations. Pet., 44. As to the third interpretation, Samsung admits it is “consistent with the specification of the ’366 Patent.” Pet., 46. Thus, by Samsung’s own admission, there is support for this claim.

D. Samsung has not shown that any intermediate claims lacked written description.

Samsung also premises its PGR-eligibility arguments on claims presented during prosecution, and later amended, that allegedly lacked written description support. Pet., 5-6. But Samsung has not shown that any such claims in fact lacked written description support. Samsung’s argument consists merely of a conclusory statement that the examiner “identified several claim limitations lacking written description” and “[by] removing these limitations, Netlist effectively conceded that the previously-presented claim ... lacked written description support.” Pet., 5-6. This is insufficient to meet Samsung’s burden.

Contrary to Samsung’s contentions of an alleged concession, Netlist

provided remarks along with the amendment Samsung identifies, in which Netlist explicitly indicated the amendment was *not* made to comply with statutory requirements, i.e., explicitly *not* conceding the prior version of the claims lacked written description. In particular, Netlist remarked:

The claims have been amended for improved clarity in particularly pointing out and distinctly claiming certain aspects of the invention. *No amendment made is related to the statutory requirements of patentability* unless expressly stated herein.

EX1002, 1428 (emphasis added).

Samsung provides no specific allegations of claim language that lacked support in any intermediate claims. Thus, this argument also fails; Samsung has not shown the '366 patent is PGR-eligible on this basis.

VI. SAMSUNG FAILS TO DEMONSTRATE THAT IT IS MORE LIKELY THAN NOT THAT THE CLAIMS WOULD HAVE BEEN OBVIOUS.

The Petition's obviousness Ground fails to demonstrate that it is more likely than not that the challenged claims are unpatentable.

A. Samsung's challenge to certain claim elements is based solely on unsupported attorney argument because Exhibit 1113 is not sworn testimony that complies with Rule 42.53(a).

Samsung's expert, Dr. Wolfe, addresses only a subset of the claim elements in his Declaration. *See* EX1003, ¶171 ("In the paragraphs below, I focus on providing context and technical explanations related to specific limitations.").

Instead of addressing all elements, he refers to Exhibit 1113, which is a 131-page, unsigned “claim chart” for Ground 2. *Id.* Dr. Wolfe mentions the chart only once (in ¶171) and does not even attempt to incorporate it by reference into his Declaration.⁴ Nor does the Petition cite or discuss Exhibit 1113. *See generally* Pet.

The Director should give no weight to Exhibit 1113. Rule 42.53(a) requires that “[u]ncompelled direct testimony must be submitted in the form of an affidavit.” 37 C.F.R. § 42.53(a). Exhibit 1113 is not in the form of an affidavit or declaration. More critically, it lacks a perjury statement and is unsigned. Therefore, it is not evidence in the form of sworn testimony that could support Samsung’s obviousness challenges.

As a result, Samsung’s challenge to certain claim elements is based solely on attorney argument—which “is not evidence.” *Icon Health & Fitness, Inc. v. Strava, Inc.*, 849 F.3d 1034, 1043 (Fed. Cir. 2017). Samsung argues all claims are *obvious* in light of the combination of Perego, Harris, and Amidi. Pet., 6, 46. But Dr. Wolfe addresses only a subset of the claim elements in his declaration, providing only 64 paragraphs to support Samsung’s analysis of 38 claims. *See* EX1003, ¶¶172-235. Addressing elements [1.c.1]-[1.c.6] of claim 1, for example, Samsung relies on all

⁴ To the extent Dr. Wolfe’s statement in ¶171 is read to incorporate Exhibit 1113 into his Declaration, that would violate Rule 42.6(a)(3).

three references to support its analysis that “Ground 2 discloses” this element. Pet., 82-86. But Dr. Wolfe does not address claim elements [1.c.1], [1.c.2], [1.c.4], or [1.c.6] in his Declaration, even though the challenge relies on an obviousness analysis for these elements, including particular operation of the proposed combination of Perego, Harris, and Amidi, and asserted motivations to combine the references specific to these claim elements. Nor does Dr. Wolfe address many other elements of claim 1. Dr. Wolfe further fails to address all elements of independent claims 16 and dependent claim 2, and he does not address the remaining claims at all. *See* EX1003. Accordingly, Samsung’s analysis for the majority of the claims and claim elements amounts to nothing more than attorney argument, which is insufficient to satisfy the threshold for institution.

B. Samsung fails to demonstrate that the Perego-Harris-Amidi combination teaches elements 1.b.3, 16.b.3, and 29.b.3.

Each of independent claims 1, 16, and 29 recites, “wherein the power delivered to the DIMM from the power rails of the system board is the *only* power received by the DIMM,” which Samsung labels elements 1.b.3, 16.b.3, and 29.b.3. During prosecution, Netlist added this element to overcome references such as Harris, which discloses power being delivered from sources other than the power rails of the system board. EX1002, 1399, 1409, 1418, 1429-31. Samsung’s proposed combination of Perego, Harris, and Amidi fails to teach elements 1.b.3, 16.b.3, and 29.b.3 at least because Samsung’s proposed Perego-Harris-Amidi

memory module receives power from Amidi's lithium-ion battery.

Amidi discloses a memory module (shown in Figures 3 and 4) that can be inserted into a socket (such as sockets 184, 188, 192, and 196 of Figure 1) to communicate with a memory controller. EX1024, 3:8-10, 3:23-24, 3:40-4:13, FIGS. 1, 3, 4. Figure 4 of Amidi, reproduced below, shows the back side of the memory module, which includes a battery 475. EX1024, 4:8-10.

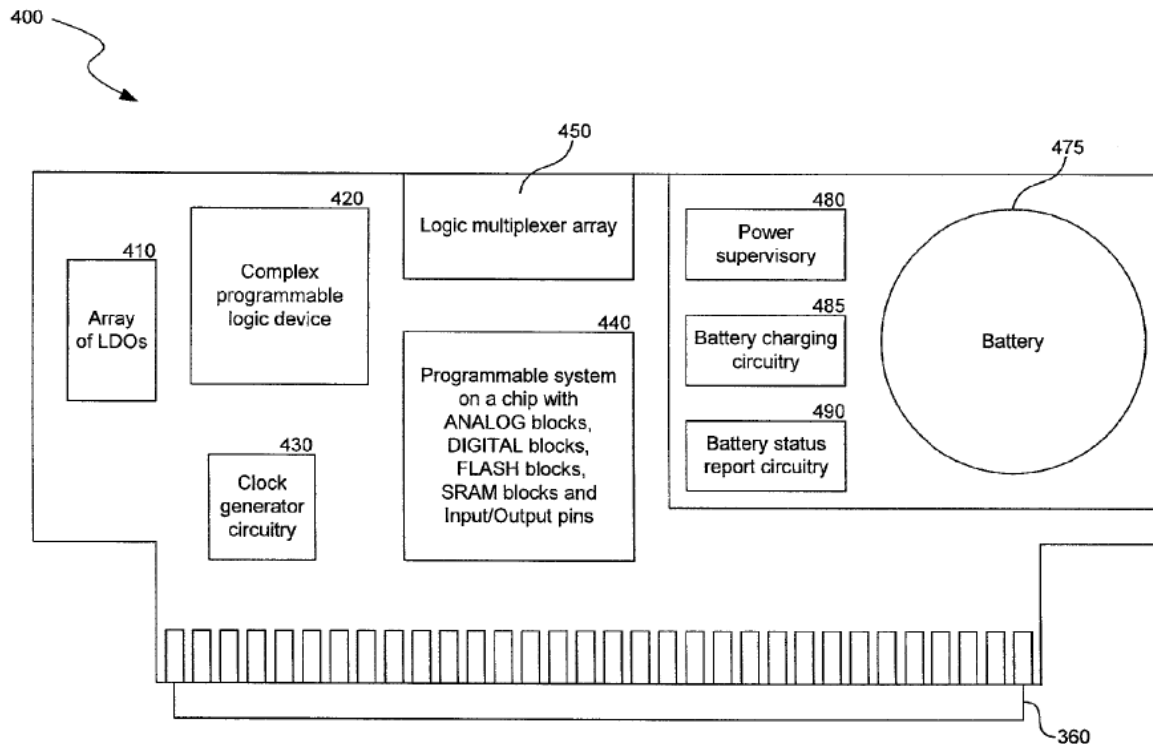


FIG. 4

EX1024, FIG. 4.

Amidi explains that “[p]art of a memory module is typically a power management block,” and illustrates an example power management block in Figure 5 (reproduced below). As shown below, power may be delivered to Amidi's

memory module via “an incoming system supply 520” or “an incoming battery supply 530.” EX1024, 4:16-19. Figure 5 of Amidi shows that the battery is a “Li-ion battery,” or lithium-ion battery. EX1024, FIG. 5. Samsung admits that power may be delivered to Amidi’s memory module via the battery. Pet., 50-51 (reproducing Figure 5 of Amidi and stating, “Amidi discloses a memory module that includes a power management block 510 to monitor the system supply voltage 520 and to switch to a battery supply 530 when the system supply fails.”).

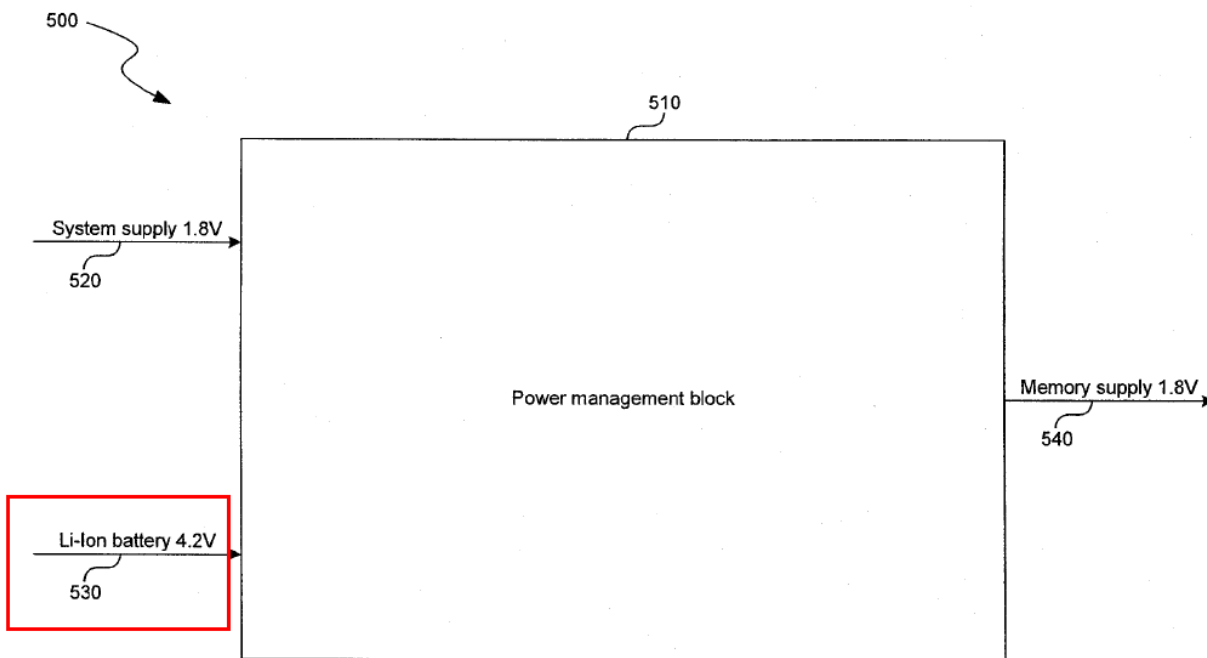


FIG. 5

EX1024, FIG. 5 (annotated).

Samsung’s proposed Perego-Harris-Amidi combination, which it applies to all claims, includes Amidi’s battery. Pet., 51-61. Namely, Samsung first proposes combining “Perego’s memory module” to include “Harris’s voltage regulator

module 102 receiving a 12V power supply (purple) from which it provides the required voltages Vdd (orange) to the memory devices 360 and voltages Vcc (pink) to the buffer device 391.” Pet., 52. Samsung created the image below to show its proposed combination of Perego and Harris.

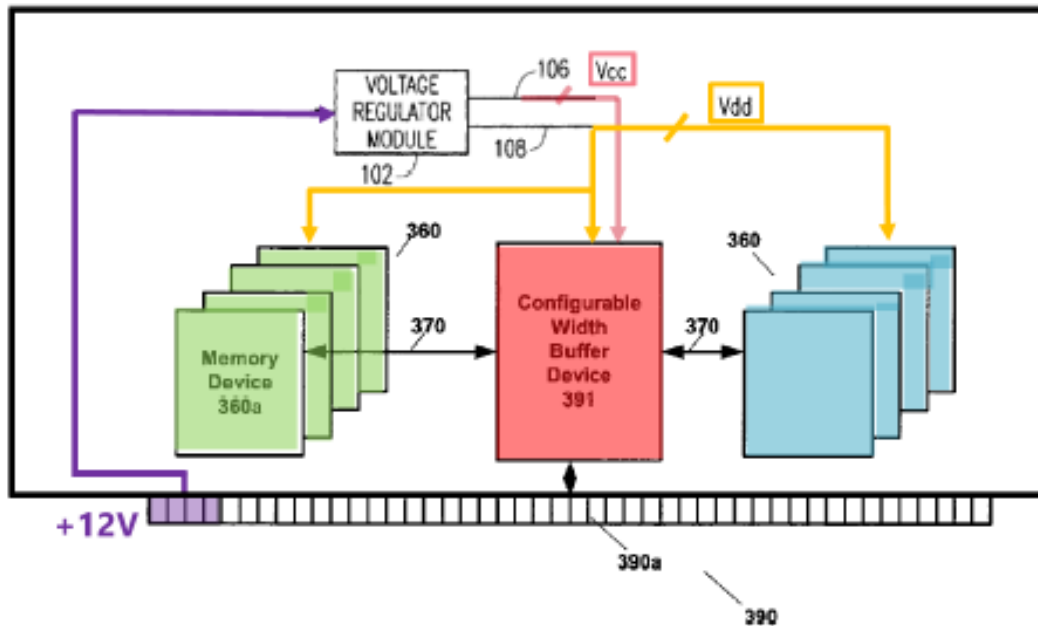


Fig. 3C

Pet., 52 (Samsung’s annotated Figure 3C of Perego to include Harris’ voltage regulator and certain voltage supply lines).

Samsung next proposes adding to the Perego-Harris combination “Amidi’s Logic and Power management functionalities (light blue)” and “on-board battery power.” Pet., 56. Samsung created the image below, further annotating Figure 3C of Perego, to show its proposed combination of Perego, Harris, and Amidi, which includes Amidi’s battery in light blue.

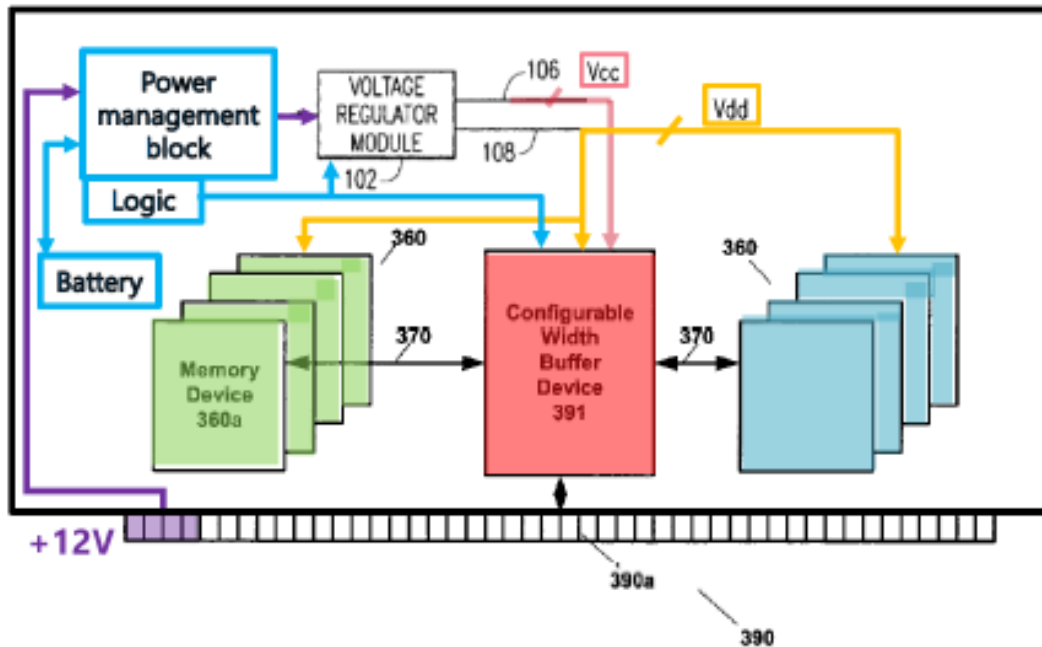


Fig. 3C

Pet., 56 (Samsung’s annotated Figure 3C of Perego to include Amidi’s power management block, logic, and *battery*, all shown in light blue).

Samsung fails to demonstrate that the Perego-Harris-Amidi combination teaches elements 1.b.3, 16.b.3, and 29.b.3 because Amidi discloses that a lithium-ion battery, which is indisputably an independent power source, provides power to the memory module. EX1024, 4:8-11, 4:16-22, 4:41-43. Contrary to Amidi’s teachings, Samsung and its expert allege that Amidi’s “‘system supply’ is the only power source for the memory module’s operations” because the module includes circuitry for re-charging the battery. Pet., 75; EX1003, ¶183. This argument is irrelevant because, even if Amidi’s battery can be re-charged by the system supply, the lithium-ion battery is an independent power source that delivers power to

Amidi's memory module (and to Samsung's combined Perego-Harris-Amidi memory module). Samsung also argues that Amidi's disclosure is "similar to that of the '366 patent." Pet., 75. But the '366 patent describes different embodiments, and merely alleging that a reference is "similar to" the patent's disclosure does not demonstrate that the *claimed* subject matter is taught or obvious.

Because Amidi's lithium-ion battery delivers power to Samsung's proposed Perego-Harris-Amidi memory module, Samsung fails to demonstrate that elements 1.b.3, 16.b.3, and 29.b.3 are taught or obvious. Accordingly, the Director should reject Samsung's Petition and deny institution.

C. Samsung fails to address known secondary considerations of non-obviousness, including its own licensing activities.

Compounding the case for denial on the merits, Samsung's obviousness challenge is incomplete because Samsung fails to address known secondary considerations of non-obviousness, including its own licensing activities related to the '366 patent. Secondary considerations "may often be the most probative and cogent evidence in the record. It may often establish that an invention appearing to have been obvious in light of the prior art was not." *Apple Inc. v. Samsung Elecs. Co., Ltd.*, 839 F.3d 1034, 1052-53 (Fed. Cir. 2016) (en banc) (quoting *Stratoflex, Inc. v. Aeroquip Corp.*, 713 F.2d 1530, 1538-39 (Fed. Cir. 1983)). Evidence of secondary considerations "must be considered in every case where present," *Apple*,

839 F.3d at 1048, and may be “crucial in avoiding the trap of hindsight ...,” *Leo Pharm. Prods., Ltd. v. Rea*, 726 F.3d 1346, 1358 (Fed. Cir. 2013).

Licensing is one such secondary consideration that must be considered, where present, when evaluating obviousness. *See Ancora Techs., Inc. v. Roku, Inc.*, 140 F.4th 1351, 1362 (Fed. Cir. 2025) (quoting *LaserDynamics, Inc. v. Quanta Comput., Inc.*, 694 F.3d 51, 79 (Fed. Cir. 2012) for the proposition that “[a]ctual licenses to the patented technology are highly probative ... because such actual licenses most clearly reflect the economic value of the patented technology in the marketplace.”). Unlike products, “[l]icenses to the challenged patent ... do not require a nexus with respect to the specific claims at issue, nor does our nexus law require that a particular patent be the only patent being licensed or the sole motivation for entering into a license.” *Ancora Techs.*, 140 F.4th at 1362.

The Board has “cautioned petitioners in prior proceedings that petitions may be denied if they do not address known evidence of secondary considerations.” *Stryker Corp. v. KFX Medical, LLC*, IPR2019-00817, Paper 10 at 28-29 (PTAB Sept. 16, 2019); *see id.*, 29 (collecting Board decisions issued between 2013-2017); *see also Gilead Sciences, Inc. v. The United States of America, Represented by the Secretary of the Department of Health & Human Services*, IPR2019-01453, Paper 14 at 26-30 (PTAB Feb. 20, 2020) (finding that “Petitioner’s failure to persuasively address the [unexpected results presented during prosecution] in its

Petition means Petitioner falls short of its burden to establish a reasonable likelihood of success in prevailing on its challenge”).

Samsung knew of but failed to address in its obviousness Ground the licensing activities between (1) itself and Netlist and (2) Netlist and SK hynix. This licensing activity demonstrates the economic value and non-obviousness of the technology that is recited in the challenged claims of the '366 patent. Indeed, that Samsung itself licensed the '366 patent is particularly probative of the non-obvious nature of the challenged claims.

1. Samsung licensed Netlist's portfolio in 2015.⁵

Samsung acknowledges its license to Netlist's portfolio included the '366 patent. EX2025, 2 (¶2). Specifically, on November 12, 2015, Netlist and Samsung entered into a Joint Development and License Agreement (“JDLA”) under which Netlist granted Samsung a license to its intellectual property, including Netlist's patents (including the '366 patent), continuations, and pending applications. EX2001, 1-2, 8.

The parties entered into this agreement to jointly develop certain DRAM technologies. Indeed, the JDLA enabled Samsung to use Netlist's technology to

⁵ Netlist's Brief on Discretionary Denial Brief (Paper 8) provides additional details of the history between Samsung and Netlist.

develop DRAM memory products that are critical to current high-performance computing and AI applications, such as double data rate, 5th generation (DDR5) memory and high bandwidth memory (HBM). EX2015, 7. And, particularly relevant to this proceeding, the JDLA concerned development of “NVDIMM” (non-volatile DIMM) products—which is the focus of the ’366 patent. *See* EX2001, 2; EX1001, 11:25-35 (describing “architectures of a non-volatile DIMM (NVDIMM) NVDIMM system” that “includes a non-volatile (for example Flash) memory subsystem 302 and a volatile (for example DRAM) memory subsystem 304.”).

As the JDLA indicates, Netlist and Samsung concurrently entered into collateral agreements, including an “Intellectual Property Security Agreement.” EX2006, 5-16. Under the Intellectual Property Security Agreement, Netlist granted Samsung a security interest in Netlist’s patents and patent applications, including divisions, continuations, and continuations-in-part. EX2006, 5. Thus, Samsung recognized the importance and value of Netlist’s patents (and relied on their validity) by requiring them as loan collateral. EX2004. The agreement required that Netlist “[p]rotect, defend, and maintain the validity and enforceability” of the assets. EX2004, 8.

Under the JDLA, Samsung was obligated to supply Netlist certain memory products at competitive prices. However, in 2018, Samsung began to deliberately

restrict Netlist's access to products and repeatedly failed to fulfill Netlist's orders, forcing Netlist to forgo business opportunities. EX2008, 4. Accordingly, Netlist terminated the JDLA on July 15, 2020, and filed suit in the Central District of California ("CDCA"). EX2008; EX2015, 7. Samsung did not record the release of its security interest to Netlist's patent assets until October 27, 2023. *See* EX2007. Following trial in the CDCA, a jury agreed with Netlist that Samsung breached the JDLA and that Netlist's termination was valid. On April 7, 2025, the district court entered judgement against Samsung pursuant to the jury verdict.⁶ EX2009.

2. SK hynix licensed Netlist's portfolio in 2021.

In 2021, SK hynix licensed Netlist's patent portfolio (including the '366 patent), further demonstrating the industry's desire for access to Netlist's superior technology. EX2023. SK hynix is a leading provider of next generation DIMMs and HBM. In the first three months of FY2025, SK hynix reported \$9.1 billion in revenue in the United States. EX2015, 28. A significant portion of this revenue is attributable to products that include Netlist's patented technology.

* * *

⁶ That decision is on appeal to the Ninth Circuit (case number 25-5531). The district court ruling is *res judicata* unless and until overturned on appeal.

Samsung plainly knew of its own licensing activities with Netlist. It also knew that SK hynix took a license to Netlist's portfolio. EX2063, 689:10-24 (testimony on April 18, 2023, in prior litigation between Netlist and Samsung). Because such known secondary-considerations evidence must be considered when evaluating obviousness, Samsung's failure to address this evidence is fatal to its obviousness challenges. Moreover, this real-world evidence demonstrates that Samsung and SK hynix, two of the largest memory manufactures, considered the claims valuable and non-obvious. Accordingly, the Director should deny institution.

In its Petition, Samsung recounts its past challenges to patents in the same patent family as the '366 patent, boasting that it has invalidated several of the patents that it once licensed. But all of Samsung's previous challenges were based on obviousness theories, and none of those cases considered the secondary consideration that Samsung licensed the relevant technology. This real-world evidence demonstrates that the claims were not obvious.

VII. SAMSUNG IMPROPERLY RELIES ON INCORPORATION BY REFERENCE FROM PRIOR BOARD DECISIONS TO SUPPORT ITS CHALLENGES.

The Petition's use of incorporation by reference violates the Board's Rules and fails to provide Patent Owner and the Board with adequate notice of Petitioner's patentability challenges. "[T]he expedited nature of IPRs bring with it

an obligation for petitioners to make their case *in their petition* to institute.”

Intelligent Bio-Systems, Inc. v. Illumina Cambridge Ltd., 821 F.3d 1359, 1369

(Fed. Cir. 2016) (emphasis added). To do so, the petition must identify, “in writing and *with particularity*, each claim challenged, the grounds on which the challenge to each claim is based, and the evidence that supports the grounds for the challenge to each claim.” 35 U.S.C. § 312(a)(3) (emphasis added); *see also DeSilva v.*

DiLeonardi, 181 F.3d 865, 866-67 (7th Cir. 1999) (incorporation “by reference

amounts to a self-help increase in the length of the [] brief” and “is a pointless imposition on the court’s time. A brief must make all arguments accessible to the

judges, rather than ask them to play archaeologist with the record.”). The Board

should not consider any arguments that are not presented in the petition. *Cisco*

Sys., Inc. v. C-Cation Techs., LLC, IPR2014-00454, Paper 12 at 10 (PTAB Aug.

29, 2014) (“[W]e will not consider arguments that are not made in the Petition, but are instead incorporated by reference”).

In its challenges, Samsung relies heavily on incorporating by reference from prior Board decisions on Netlist patents instead of providing fulsome explanations of how the asserted combination of Perego, Harris, and Amidi allegedly render the challenged claims obvious. *See, e.g.,* Pet., 86 (addressing element 1.c.1), 93-94 (addressing 1.c.6), 104 (addressing element 1.e), 127 (addressing claim 11). At bottom, Samsung’s use of incorporation by reference and string citations to

documents in other records skirts its obligation to perform reasoned analysis.

Samsung's reliance on prior decisions related to different claims and its failure to make the required necessary evidentiary showings in its Petition are fatal to its challenges. *See Canadian Solar Inc. v. Maxeon Solar Pte., Ltd.*, IPR2024-01039, Paper 13 at 26-28 (PTAB Jan. 14, 2025) ("Petitioner does not direct us to any authority establishing that it may rely on findings of ... a Board decision involving different claims from a different patent application to satisfy its evidentiary burdens in this proceeding."). Thus, the Director should deny institution.

VIII. *CHEVRON* AND *DEEPER* FAVOR DENYING INSTITUTION.

The merits consideration phase includes determining whether the petition presents a sufficient number of grounds/challenges that meet the reasonable likelihood standard. Interim Process, § I.F. When "a petition meets the standards for institution in relation to fewer than all the challenges presented, or where deficiencies in the petition ... affect only a portion of the challenges presented, the [Board] will evaluate all the challenges and determine whether, in the interests of efficient administration of the Office and integrity of the patent system, the entire petition should be denied." Trial Practice Guide, § II.D.3 (citing 35 U.S.C. §§ 316(b), 326(b); *accord Chevron Oronite Co. LLC v. Infineum USA L.P.*, IPR2018-00923, Paper 9 (PTAB Nov. 7, 2018) (informative); *Deeper, UAB v. Vexilar, Inc.*, IPR2018-01310, Paper 7 (PTAB Jan. 24, 2019) (informative).

As discussed throughout this Preliminary Response, the Petition suffers from numerous fatal deficiencies. Given these defects, institution of review should be denied even if some of the claims or grounds meet the standard for institution (which they do not). It would not be an efficient use of the Board's valuable time and resources to institute review when resolution of this proceeding would be costly and time-consuming to address challenges that are flawed from the outset. *See Interim Processes Memo, 3; 35 U.S.C. § 316(b).*

IX. CONCLUSION

Samsung's Petition fails to meet the threshold for institution, and thus should be denied.

Respectfully submitted,

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CERTIFICATE OF WORD COUNT (37 C.F.R. § 42.24(d))

1. This Patent Owner Preliminary Response complies with the type-volume limitation of 18,700 words, comprising 10,948 words, excluding the parts exempted by 37 C.F.R. § 42.24(a)(1).

2. This Patent Owner Preliminary Response complies with the general format requirements of 37 C.F.R. § 42.6(a) and has been prepared using Microsoft® Word in 14-point Times New Roman font.

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CERTIFICATE OF SERVICE (37 C.F.R. § 42.6(e))

I certify that the above-captioned **PATENT OWNER PRELIMINARY
RESPONSE UNDER 37 C.F.R. § 42.207(a)** and associated Exhibits 2061-2070
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